

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

MID- ATLANTIC RESTAURANT GROUP LLC
d/b/a KELLY'S TAP ROOM

and

Case 04-CA-162385

ROBIN C. HELMS, an Individual

**GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION FOR A BILL OF PARTICULARS**

On December 17, 2015, the Acting Regional Director for the Fourth Region of the National Labor Relations Board issued a Complaint and Notice of Hearing in the above-captioned matter. It alleges that Respondent, Mid-Atlantic Restaurant Group LLC d/b/a Kelly's Tap Room, engaged in certain acts and conduct in violation of Section 8(a)(1) of the Act. On January 27, 2015, Respondent forwarded a Motion for A Bill of Particulars to the Chief Administrative Law Judge. Counsel for the General Counsel submits that Respondent's Motion should be denied.

The Complaint alleges, in pertinent part, that:

4. (a) In March and April, 2015, Respondent's employees, including Robin C. Helms, openly complained about shift schedules and the loss of pay resulting from the malfunctioning of Respondent's computer system.

(b) On or about April 30, 2015, Respondent discharged its employee Robin C. Helms.

(c) Respondent engaged in the conduct described above in subparagraph (b) because

Robin C. Helms, and other employees engaged in the conduct described above in subparagraph (a), and in order to discourage its employees from engaging in protected, concerted activities.

In its Motion, Respondent contends “that there was not sufficient information in the Complaint...for it to properly defend itself against the allegations made;” “the Complaint is totally devoid of any assertion of how” Robin C. Helms’ actions constituted or could have been construed to be, ‘concerted activity;’ no facts are alleged which suggest that her conduct “as alleged, even if true, was anything more than her individual complaints to her employer;” no other affected employee is alleged and it is not alleged that she “was taking action on behalf of anyone other than herself;” “Respondent is unable to properly defend itself without prior notice of the facts leading to the conclusion that there was ‘concerted activity’ in this matter;” the allegations “are not sufficiently precise to allow Respondent to prepare for a hearing;” Respondent “seeks only critical information...that, in fairness, should be made available to Respondent;” “the Complaint does not supply enough information for...Respondent to properly challenge the Board’s characterization of” her conduct as concerted so it “is not sufficient to satisfy due process concerns;” and the Complaint does not “provide the minimum level of particularity,” making Respondent “unable to adequately prepare for a hearing.”

Section 102.15 of the Board's Rules and Regulations provides, in part, that "The complaint shall contain...a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed." It is not the function of a pleading to provide evidentiary matter. Thus, a bill of particulars is only justified when the complaint is too vague for Respondent to meet the General Counsel's

case. *Drukker Communications, Inc. v. N.L.R.B.*, 700 F. 2d 727 (D.C. Cir. 1983); *North American Rockwell Corp. v. N.L.R.B.*, 389 F. 2d 866 (10th Cir. 1968).

The pleadings at issue herein advise Respondent of the nature of the violation alleged, the manner in which the violation was committed, and the approximate date of the alleged unlawful conduct. See, e.g., *Dal-Tex Optical Co.*, 130 NLRB 1313, 1313-14 fn. 1 (1961); *Walsh-Lumpkin Wholesale Drug Co.*, 129 NLRB 294, 295 (1960). While Robin C. Helms was the only employee who engaged in protected, concerted activities named in the Complaint, this is because the sole unfair labor practice issue concerns her discharge. Accordingly, the Complaint is sufficient to acquaint Respondent with the issues to be considered at trial and is sufficiently specific to enable Respondent to fully litigate the alleged unfair labor practice and to defend against the allegations made in the Complaint. See *North American Rockwell*, supra; *Morrison-Knudsen Co.*, 210 NLRB 174, 174 fn. 1 (1974); *Sunbeam Lighting Co.*, 136 NLRB 1248, 1248 fn. 2 (1962); *Walsh-Lumpkin*, supra; *Chambers Mfg. Corp.*, 124 NLRB 721, 722 (1959), enf'd. 278 F. 2d 715 (5th Cir. 1960); see also *Dal-Tex*, supra.

Respondent, in effect, is seeking evidence and pre-trial discovery, which the Board long has prohibited. *North American Rockwell*, supra; *Spiegel Trucking Co.*, 225 NLRB 178, 178 fn. 5 (1976); *Del E. Webb Construction Co.*, 95 NLRB 377, 377 fn. 2 (1951). The General Counsel is not required to supply Respondent with a detailed analysis of his proof prior to the opening of the hearing. *Spiegel Trucking*, supra; *Morrison-Knudsen Co.*, supra. It is submitted that paragraph 4 of the Complaint comports with the standards for complaints set forth in Section 102.15 of the Board's Rules and Regulations.

In view of the foregoing, Respondent's Motion for a Bill of Particulars should be denied.

Dated at Philadelphia, Pennsylvania, this 9th day of February, 2016.

Respectfully submitted,

/s/ ***David Faye***

DAVID FAYE
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National Labor Relations Board